

Message Text

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ACTION ARA-14

INFO OCT-01 ISO-00 PM-04 INR-07 SY-05 SCA-01 PRS-01
L-03 SS-15 SSO-00 INRE-00 /051 W
-----092302Z 008399 /72
O 092133Z JUN 77
FM AMEMBASSY PANAMA
TO SECSTATE WASHDC IMMEDIATE 2288

C O N F I D E N T I A L SECTION 1 OF 2 PANAMA 4173

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EO 11652: GDS
TAGS: PFOR, MILI, PN, PQ
SUBJECT: GOP REQUEST TO EXTRADITE U.S. SOLDIER

REF: A. PANAMA 3887; (B) PANAMA 4072

SUMMARY: A JUNE 8 MEETING OF PRC PRINCIPALS AND STAFF
TO CONSIDER CUEVAS CASE (REFTELS) REVEALED SEVERAL
ADDITIONAL FACTS, MOST IMPORTANT OF WHICH IS THAT
CUEVAS IS NOT A U.S. CITIZEN. THIS MESSAGE PROVIDES
FACTS OF CASE BASED UPON INTERROGATION OF CUEVAS, AND
USSOUTHCOM LERL VIEWS ON STATUS OF U.S. ARMY CASE
AGAINST HIM. A SEPARATE MESSARE WILL DISCUSS LEGAL
ASPECTS OF GOP EXTRADITION REQUEST FOR CUEVAS,
AND POLICY IMPLICATIONS OF THIS REQUEST. END SUMMARY.

1. CHARGE MET WITH GOVERNOR PARFITT, LT. GEN. MCAULIFFE
AND STAFF MEMBERS INCLUDING LEGAL ADVISERS AT SOUTHCOM
HEADQUARTERS 1600 JUNE 8 TO DISCUSS GOP REQUEST FOR
EXTRADITION OF U.S. SOLDIER ALBERTO CUEVAS (REFTELS).

2. SOUTHCOM LEGAL ADVISER REVIEWED EVIDENCE IN CASE,
BASED UPON INTERROGATION OF CUEVAS. THE FOLLOWING
MODIFIES OR CORRECTS PREVIOUS REPORTS IN SOME RESPECTS;
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IT IS A REFLECTION OF THE SOUTHCOM REPORT AND IMPLIES
NO JUDGMENT OF GUILT BY THE EMBASSY.

3. CUEVAS IS NOT A U.S. CITIZEN--HE WAS BORN IN SANTIARO,
DOMINICAN REPUBLIC, ENTERED U.S. VIA PUERTO RICO,
AND LIVED AT ONE TIME IN THE BRONX. HE IS NOT A HIGH-
SCHOOL GRADUATE. HE ENTERED U.S. ARMY ONE YEAR AGO

TODAY, AND ARRIVED IN CANAL ZONE IN OCTOBER 1976, ASSIGNED TO FORT KOBBE. RECORD PRIOR TO CURRENT SEQUENCE OF EVENTS INCLUDES ONE CASE OF NON-JUDICIAL PUNISHMENT (FINE).

4. ON APRIL 18, SEVERAL SOLDIERS LEFT M-16 RIFLES AT ENTRANCE OF FT. KOBBE MESS HALL DURING LUNCH; CUEVAS TOOK ONE AND BURIED IT IN VENADO BEACH AREA OF CANAL ZONE. HE LATER "FOUND" 29 ROUNDS OF AMMUNITION IN HIS UNIT. RIFLE REMAINED HIDDEN THERE AS CUEVAS WENT AWOL APRIL 26-MAY 9.

5. ON MAY 30, CUEVAS RETRIEVED RIFLE, TOOK A BUS TO PANAMA CITY AND CAUGHT A TAXI. HE TOLD DRIVER THAT HE

DID NOT LIKE GOP AND PROPOSED TO DO SOMETHING ABOUT IT. ON CUEVAS' ORDERS, TAXI PASSED THREE TIMES BY THE GN TRAFFIC POLICE BOOTH AT 45TH STREET AND TRANS-ISTHMIAN HIGHWAY BEFORE TRAFFIC PATROLMAN THERE WAS ALONE. ON THIRD TIME, TAXI STOPPED AND CUEVAS CALLED GUARDSMAN. GUARDSMAN EVIDENTLY SAW RIFLE, TURNED AND RAN. CUEVAS FIRED TWO SHOTS AT HIM, THEN SAW A GN PATROL TRUCK APPROACHING AND FIRED SEVERAL ROUNDS OF AUTOMATIC FIRE AT IT. HE FIRED AGAIN AT THE TRAFFIC PATROLMAN, AND THEN DIRECTED THE TAXI DRIVER, AT GUNPOINT, TO TAKE HIM TO VERA CRUZ, ADJACENT TO FT. KOBBE.

6. A U.S. NAVY CAPTAIN (MEDICAL) AND TWO OTHER U.S. MILITARY PERSONNEL WERE IN A CAR ABOUT 50 FEET FROM SCENE. CONFIDENTIAL

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ALTHOUGH THEIR STATEMENT VARIES IN CERTAIN RESPECTS (E.G., THEY THOUGHT THE TRAFFIC PATROLMAN WAS KILLED), THEY HEARD THE SHOTS AND SAW THE TRAFFIC PATROLMAN AND THE GN PATROL TRUCK AT THE TIME AND PLACE CUEVAS ADMITS TO HAVE DONE THE SHOOTING.

7. EVENTS LATER THAT EVENING ARE SUBSTANTIALLY AS PREVIOUSLY REPORTED. DURING PERIOD MAY 30-JUNE 3, CUEVAS WANDERED RATHER AIMLESSLY AROUND CANAL ZONE AND PANAMA CITY. ON JUNE 3, HE LEARNED THAT HIS PANAMANIAN GIRL FRIEND HAD BEEN DETAINED BY NATIONAL GUARD. HE TELEPHONED MILITARY POLICE DESK AT FT. CLAYTON AT 2100, AND SHORTLY THEREAFTER SURRENDERED TO AN MP CAR SENT TO SHALER BUS TERMINAL FOR THAT PURPOSE. HE IS NOW CONFINED AT FT. CLAYTON STOCKADE.

8. DURING INTERROGAION, CUEVAS ADMITTED ALL EVENTS, INCLUDING SHOOTING OF GUARDSMAN AND HOLDING TAXI DRIVER AT GUNPOINT. THE ONLY THING WHICH HE CONSIDERS TO HAVE

BEEN WRONG, HOWEVER, WAS HIS THEFT OF THE M-16. HE STATES THAT THE PRESENT PANAMANIAN GOVERNMENT IS TERRIBLE, AND NO ONE, NONE OF THE POLITICIANS, IS DOING ANYTHING ABOUT IT, ALTHOUGH HE SPECIFICALLY DENIED BEING A MEMBER OF OR IN CONTACT WITH ANY POLITICAL GROUP. HE SAID THAT AT ONE POINT HE WANTED TO KILL GENERAL TORRIJOS. THEN HE DECIDED TO KILL A PARTICULAR NATIONAL GUARDSMAN WHO ONCE HARASSED HIM.

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9. PRIOR TO THIS INCIDENT, HE WAS AWAITING TRIAL ON ONE COUNT OF AWOL AND ONE OF BATTERY UPON AN ACTING NCO. HE COULD HAVE BEEN SENTENCED TO CONFINEMENT ON THESE CHARGES; IF SO, HE WOULD HAVE BEEN SENT TO U.S. AS THERE IS NO MILITARY CONFINEMENT FACILITY IN CANAL ZONE. HE SAID HE DECIDED TO SHOOT AND KILL AT LEAST ONE NATIONAL GUARDSMAN IMMEDIATELY BECAUSE OF THE CHANCE HE WOULD BE REMOVED FROM THE ISTHMUS AND NOT HAVE ANOTHER OPPORTUNITY TO "DO" ANYTHING ABOUT GOP.

10. CUEVAS HAS NOT YET BEEN EXAMINED BY A PSYCHOLOGIST, BUT LAY OPINION OF SOUTHCOM AND 193RD BRIGADE LAWYERS IS THAT HE MAY NOT BE COMPETENT TO STAND TRIAL. IN ANY EVENT, THEY EXPECT HIS COUNSEL TO RAISE THIS ISSUE.

11. CUEVAS WILL BE CHARGED ON JUNE 9 BY U.S. ARMY UNDER UNIFORM CODE OF MILITARY JUSTICE WITH FOLLOWING OFFENCES: ATTEMPTED MURDER (ARTICLE 80 UCMJ); TWO COUNTS OF AWOL, 4/26-59 AND 5/30-6/3 (ARTICLE 86); LARCENY OF RIFLE, TWO MAGAZINES AND 29 ROUNDS OF

AMMUNITION (ARTICLE 121); BETTERY UPON SOLDIER (ARTICLE 128); AND KIDNAPPING (I.E., THE TAXI DRIVER, ARTICLE 134).

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12. PRESENTATION OF CHARGES TO CUEVAS WILL BEGIN A FORMAL INVESTIGATION UNDER ARTICLE 32 UCMJ. SOUTHCOM LEGAL ADVISER ESTIMATED THAT TRIAL WOULD PROBABLY NOT TAKE PLACE UNTIL MID-AUGUST AT EARLIEST, ASSUMING CUEVAS IS FOUND COMPETENT TO STAND TRIAL. AT THAT TIME, HE SAID, DEFENSE COUNSEL (A MILITARY COUNSEL HAS BEEN DESIGNATED FOR CUEVAS) COULD MOVE FOR CHANGE OF VENUE IN VIEW OF PREJUDICIAL PRETRIAL PUBLICITY AND POLITICAL IMPLICATIONS OF CASE LOCALLY. CHANGE WOULD BE AT DISCRETION OF PRESIDENT OF COURT.

13. SOUTHCOM LEGAL ADVISER NOTED THAT IN TWO OF THE OFFENCES, I.E., LARCENY AND KIDNAPPING, MILITARY JURISDICTION WAS CONCURRENT WITH THAT OF CANAL ZONE GOVERNMENT, SINCE ACTS

TOOK PLACE IN CANAL ZONE. HOWEVER, CANAL ZONE GOVERNMENT NORMALLY DEFERS TO MILITARY IN CASES SUCH AS THIS.

14. LEGAL ADVISER ASSESSED CASE AS FOLLOWS: LARCENY CHARGE IS JUST ABOUT SOLID, AND CARRIES MAXIMUM SENTENCE OF FIVE YEARS' CONFINEMENT. CHARGES OF AWOL AND BATTERY UPON SOLDIER (LATTER NOT RELATED TO CURRENT SEQUENCE OF EVENTS) ARE LESS SERIOUS AND MAY ULTIMATELY BE DROPPED BEFORE TRIAL. ARMY WILL ALMOST CERTAINLY BE ABLE TO PROVE SOMETHING, WHETHER ATTEMPTED MURDER OR SOME LESSER OFFENCE, ARISING FROM SHOOTING INCIDENT USING ONLY WITNESSES UNDER U.S. MILITARY AUTHORITY, BUT CASE WOULD BE MUCH SOLDIER IF WOUNDED IN AND ONE OR MORE FROM TRUCK COULD BE BROUGHT TO TESTIFY. KIDNAPPING CHARGE COULD ONLY BE PROVEN IF TAXI DRIVER WOULD TESTIFY.

15. IN EVENT OF A CHANGE OF VENUE, ARMY WOULD HAVE TO REQUEST THAT PANAMANIAN WITNESSES COME TO SITE OF TRIAL. IF THEY FAILED TO DO SO, AT LEAST
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KIDNAP CHARGE WOULD NECESSARILY FALL.

16. CINC STATED THAT PRIOR TO CUEVAS' SURRENDER, NATIONAL GUARD G-2 HAS BEEN SEARCHING INTENSIVELY FOR HIM--IN FACT, HE SUSPECTED THAT CUEVAS SURRENDERED BECAUSE HE FELT G-2 WAS CLOSING IN. AFTER HIS SURRENDER, SOUTHCOM PROVOST MARSHAL TOLD LT. COL. NORIEGA, CHIEF OF R-2, HE HOPED NATIONAL GUARD WOULD ASSIST IN MAKING WITNESSES FROM PANAMA AVAILABLE FOR INVESTIGATION AND TRIAL. NORIEGA INDICATED THAT HE WOULD BE RECEPTIVE TO A WRITTEN REQUEST TO DO THIS. SOUTHCOM SPECULATES THAT NORIEGA WOULD HAVE GREATLY PREFERRED TO HAVE CAUGHT CUEVAS HIMSELF, BUT NOW THAT U.S. ARMY HAS HIM HAS RESIGNED HIMSELF

TO NOT GETTING CUEVAS BACK. ACCORDINGLY, THEY READ NORIEGA AS PRAGMATICALLY INTERESTED IN SEEING THAT CUEVAS GETS WHAT IS COMING TO HIM FROM SOMEONE, AND HENCE READY TO ASSIST ARMY IN PROSECUTING HIM.

17. IT WAS AGREED AT MEETING THAT ACTING PROVOST MARSHAL WILL CARRY A MILITARY LETTER FROM CINS TO NORIEGA REQUESTING THAT WITNESSES BE MADE AVAILABLE FOR ARMY INVESTIGATION OF CHARGES AGAINST CUEVAS, TO SEE WHAT NORIEGA'S REACTION WILL BE. LETTER WILL CONTAIN NO INDICATION WHATEVER THAT IT IMPLIES ANY DECISION ON EXTRADITION REQUEST. THIS WILL BE DELIVERED AS SOON AS POSSIBLE ON OR AFTER JUNE 9.

18. SEPTTEL DISCUSSES LEGAL ASPECTS OF EXTRADITION REQUEST, AND POLICY IMPLICATIONS OF THIS CASE.

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